RECENT DECISIONS

BAIL—ERROR TO DENY MOTION TO UNDO FORFEITURE OF BAIL OF ONE CIVILLY DEAD.—The defendant was arrested in North Dakota for carrying a concealed weapon. His wife deposited a cash bail for his appearance in court, whereby, he was released. When the time for his appearance occurred he was in the penitentiary of another State, under a sentence for life on a charge and conviction of bank robbery. Hence, upon his failure to appear, the court declared the forfeiture of the bail money. The defendant and his wife made a motion to vacate the forfeiture. *Held,* forfeiture vacated. *State* v. *Williams* (N. D. 1922), 189 N. W. 625.

Obviously, the spirit of the law in regard to the point here involved is to discharge the surety upon a bail for any action by the State prejudicing the rights of the surety, without his knowledge and consent. *Cooper* v. *State* (1879), 5 Tex. Ct. App. 215, 32 Am. Rep. 571. Likewise, the surety will be discharged if the principal, having given bond to appear before the United States court in one district, is with the consent of that court, removed for trial under an indictment in another district. *In re Beavers* (1904), 131 Fed. 366. And, in *People* v. *Bartlett* (1842), 3 Hill (N. Y.) 570, it was held to be a good defense to an action against sureties on a recognizance that at the time the principal should have appeared before the court, that he was in jail in another county in the same State, upon a criminal charge. For the same holding see, *State* v. *Funk* (1910), 20 N. D. 145, 127 N. W. 722, 30 L. R. A. (N. S.) 211, cited in the opinion of the court as authority for the decision in the instant case.

The law does not regard the action of another State as favorable to the release of sureties on a bail bond, as it does the action of the State in which the bail bond is given. Thus, in direct conflict with the instant case, it has been held that if the performance of a recognizance be rendered impossible by the imprisonment of the principal in another State, it does not discharge bail. *King* v. *State* (1885), 18 Neb. 375, 25 N. W. 519; *Yarbrough* v. *Commonwealth* (1889), 89 Ky. 151, 12 S. W. 143; *Taylor* v. *Taintor* (1872), 83 U. S. 366, 21 L. Ed. 287.

The reason for the decision reached in the instant case seems clearly attributable to the fact that the court regarded the defendant as civilly dead; and regarded civil death equivalent to natural death, as a release of bail bond.

CHATTEL MORTGAGES—SUPERIOR TO SUBSEQUENT LIENS FOR REPAIRS, STORAGE AND THE LIKE.—The owner of a truck, gave the plaintiff a chattel mortgage on said truck, retaining same in his possession. Later the truck was delivered by the owner to the defendant for repairs, the defendant being in the general garage and automobile repair business. The plaintiff knew of this arrangement but made no objection to it. The defendant made the required repairs and stored the truck for some time;